

# EIP



## The UPC – an overview after four months

The UPC has now been in operation for more than four months. As of 16 October 2023 a total of 63 cases are publicly visible on the CMS, up from 43 on 21 August [\[1\]](#). These are made up of 38 infringement actions, 15 revocation actions, six applications for provisional measures, one application to preserve evidence and three counterclaims for revocation (filed in relation to existing infringement actions).

The highest filing company since the last report is Njoy Netherlands B.V. which has filed 9 revocation actions in Paris Central Division concerning patents of Juul Labs Inc and VMR Products LLC relating to vaping devices.

Figure 1 below illustrates the split between different type of cases for the 63 cases.

p2

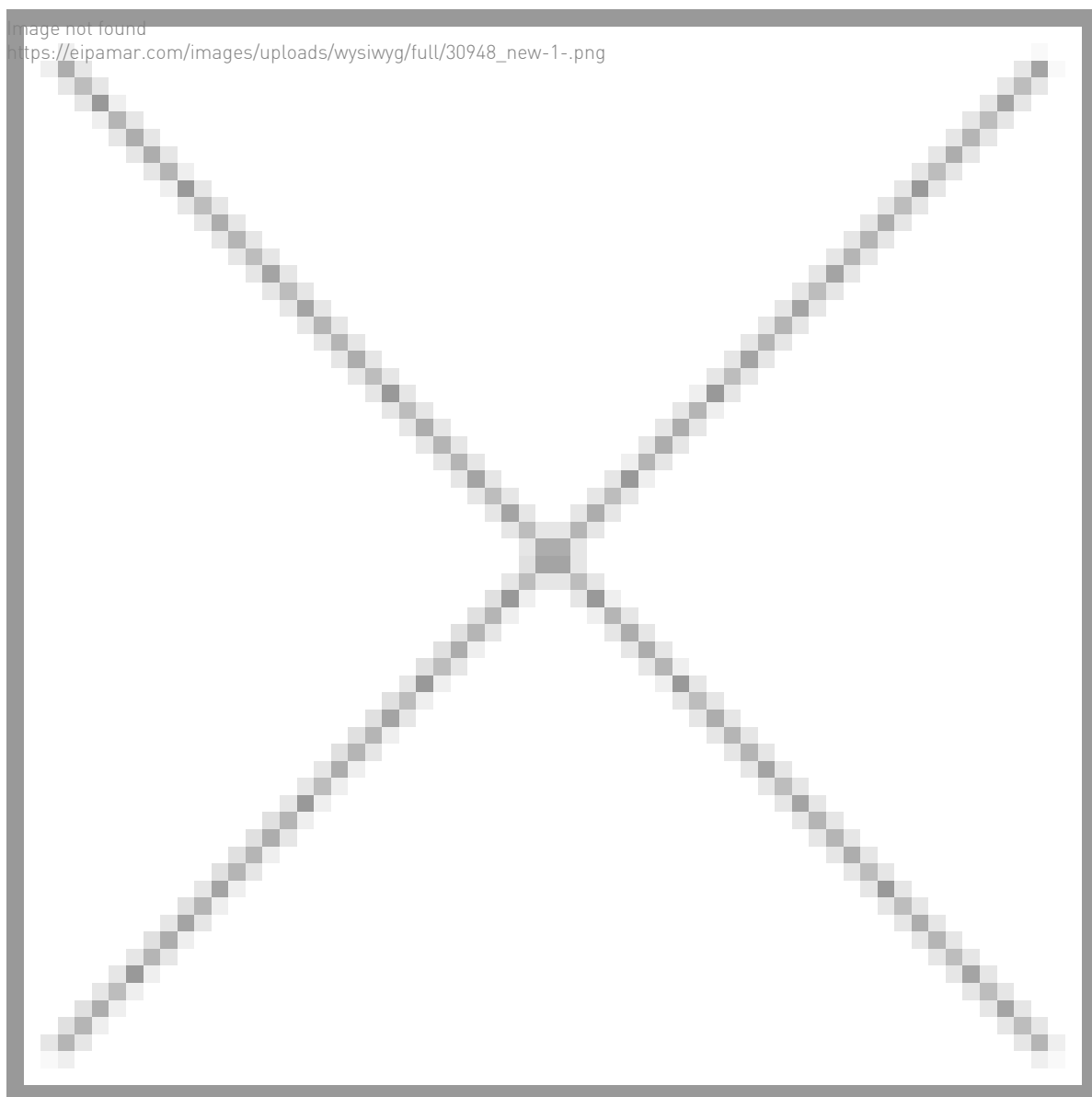


Figure 1

Figure 2 shows how the 38 infringement cases are divided between the local and regional divisions. As can be seen, Munich local division is emerging as a clear favourite for infringement filings.

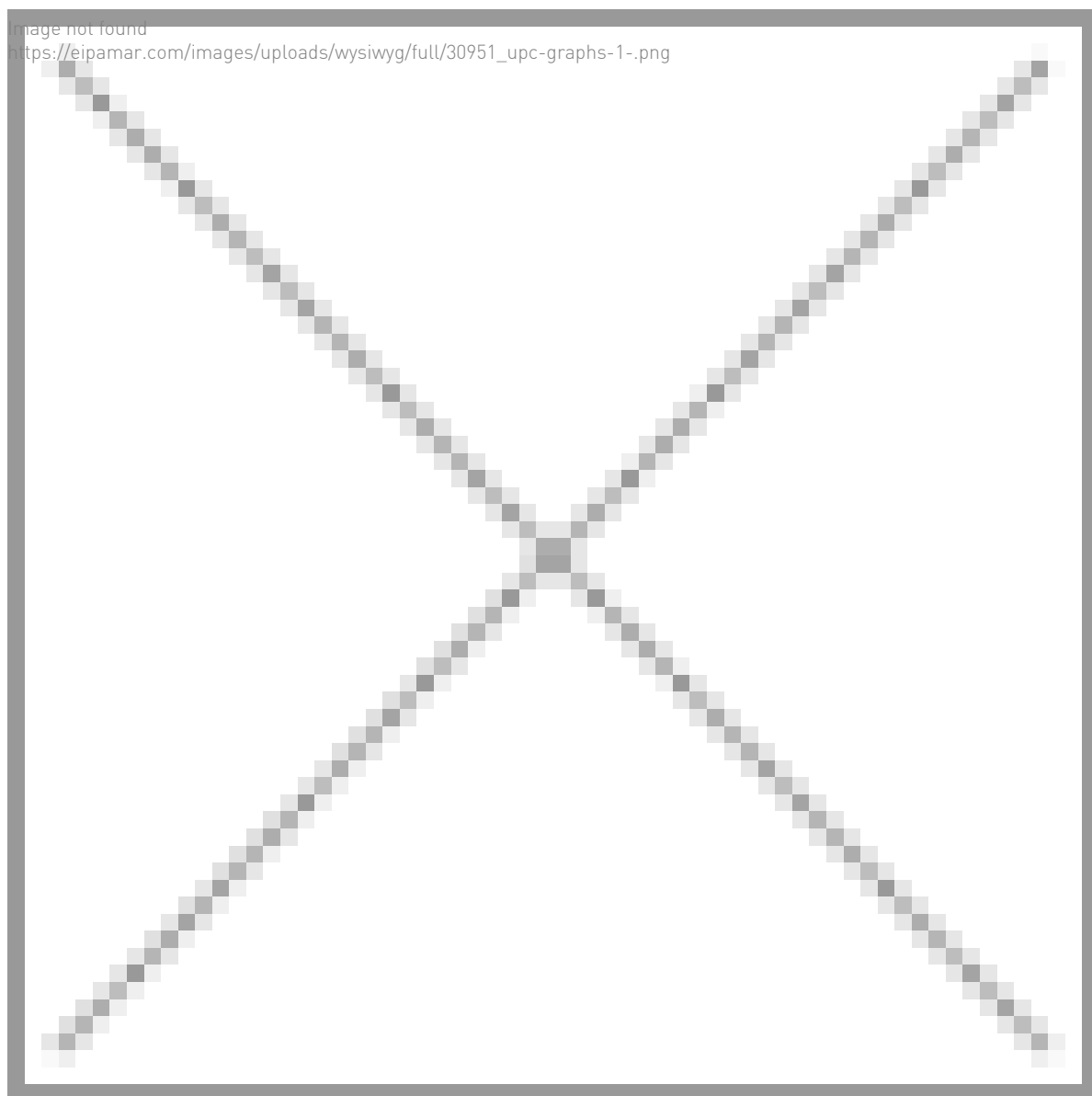


Figure 2

Figure 3 shows the incremental change in filings visible on CMS since our previous report on 21 August. It is clear from this that following an initial flurry of infringement cases, the rate of filing of these has calmed but there has been an uptick in the number of revocations filed (attributable to Njoy).

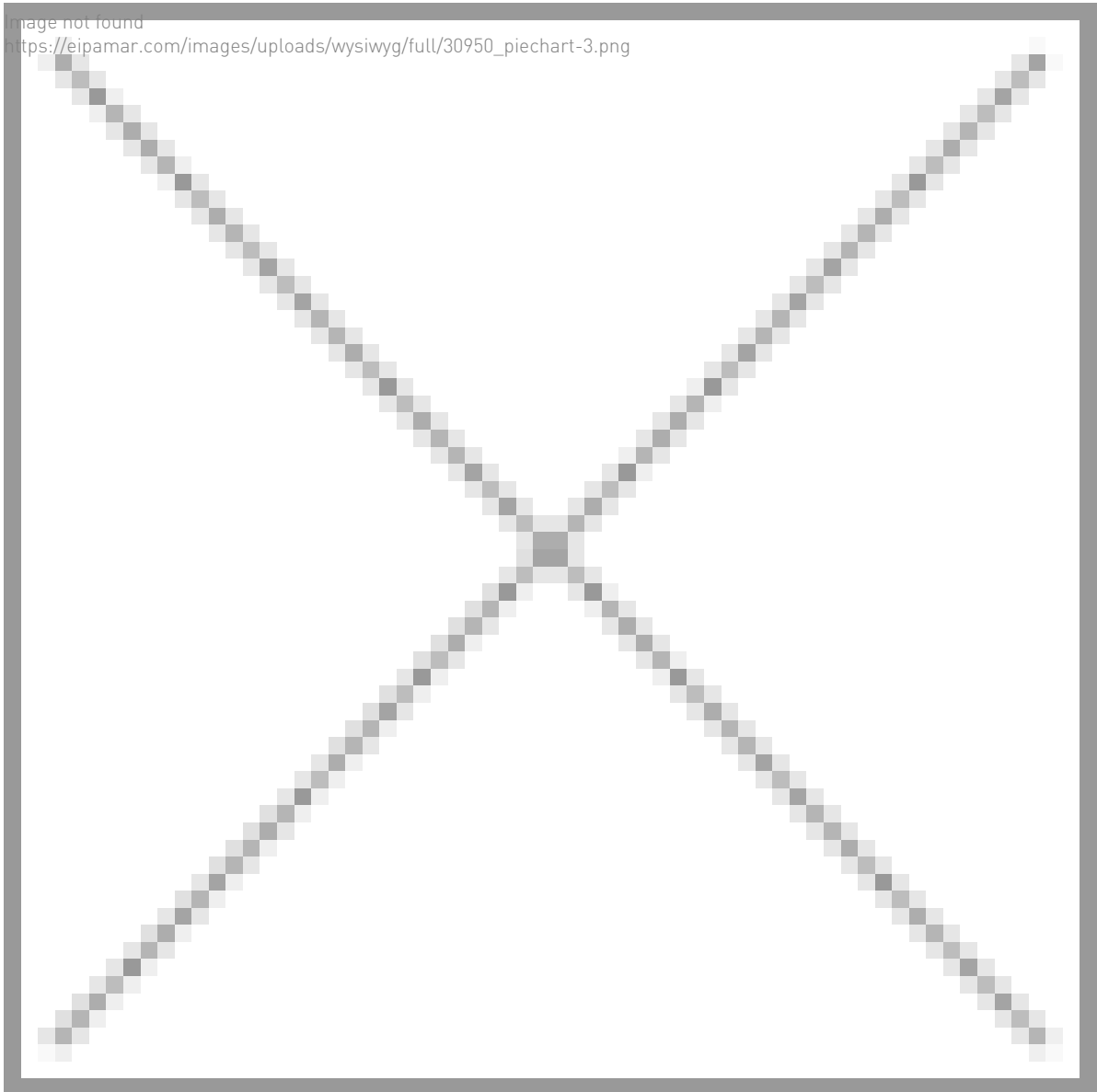


Figure 3

Two appeals have been lodged. The first relates to the Amgen v Sanofi infringement action in Munich local division where the CFI ruled that it is legitimate to file and serve a statement of claim which refers to annexes that are to be provided without those annexes actually needing to be provided in order to effect good service, order ref.

ORD\_566193/2023, reported [here](#). This appeal was heard on 13 October 2023 and we will report the outcome when available. The second appeal is Nanostring's appeal against a provisional injunction awarded by Munich local division by decision of 19 September 2023 following a hearing on 5 September concerning a unitary patent (ref. ACT\_459746/2023, reported [here](#)).

As well as this first Nanostring decision there have been three other court decisions on Provisional Injunctions since our last report. At a hearing on 13 September 2023, the Vienna local division refused to award a provisional injunction requested by Cup&Cino Kaffee\_System Vertrieb GmbH & Co KG against Alpina Coffee Systems GmbH in a dispute

relating to apparatus for frothing milk for coffee.<sup>[2]</sup> The Helsinki local division refused Aim Sport's application for a provisional injunction against Supponor at a hearing on 21 September 2023 on the technical ground that the patent concerned had been opted out and could not be validly opted back in because there were already national proceedings relating to that patent in existence, even though those had been commenced before the UPC came into force (written decision not yet available). Further, a potential second provisional injunction against Nanostring based on an EP patent was refused by Munich local division (see report [here](#)) with a dismissal on 10 October following a hearing on 19 September.

We are also awaiting the outcome of an application for provisional measures made by Edwards Life Sciences against Meril listed to be heard by the Munich local division on 10 October 2023.

Four applications to inspect documents from the file have been made: two in Munich local division, one in Nordic Baltic and one in Milan. Three have been refused (with the one in Nordic\_Baltic awaiting final determination as at 16 October 2023). We reported the reasons given for two of these [here](#). The written reasons for the third have not (yet) been published by the UPC.

As of 16 October 2023, according to the EPO's Unitary Patent Dashboard, there are 11,117 registered Unitary Patents, with a further 593 requests pending.<sup>[3]</sup>

<sup>[1]</sup> The date of our previous review covering the first 12 weeks of UPC.

<sup>[2]</sup> While there has been public notification of the hearing in this case, the details of this proceeding itself are not visible on CMS and so it is not included in the numbers quoted.

<sup>[3]</sup> [https://www.epo.org/en/about\\_us/statistics/statistics\\_centre#/unitary\\_patent](https://www.epo.org/en/about_us/statistics/statistics_centre#/unitary_patent)